Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Connect America Fund A National Broadband Plan for Our Future High-Cost Universal Service Support	WC Docket No. 10-90 GN Docket No. 09-51 WC Docket No. 05-337

COMMENTS OF THE KENTUCKY TELEPHONE ASSOCIATION

July 12, 2010

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EXECUTIVE SUMMARY

The individual members of the Kentucky Telephone Association participating in these comments are rural incumbent local exchange carriers ("RLECs") and welcome the opportunity to comment on the Federal Communications Commission ("FCC" or "Commission") Notice of Proposed Rulemaking on Universal Service Reform.

The RLECs make some very important initial observations and then address specific proposals identified in the NOI/NPRM. The RLECs demonstrate that under the existing high-cost support mechanisms, the Commission's goal of universal access to broadband in rural areas is indeed being achieved by rate-of-return regulated incumbent local exchange carriers. Furthermore, the RLECs submit that the proposals in the NOI/NPRM to "cap and cut" legacy high-cost support would be extremely detrimental to the continued deployment of broadband to rural areas and thus contrary to the National Broadband Plan's goal of universal access to broadband in rural areas served by rate-of-return carriers. Accordingly, the FCC should reject certain of the NBP recommendations appertaining to rate-of-return carriers and move forward in developing a mechanism that would be consistent with the directives and policies established in Communications Act of 1934, as amended that further the public interest.

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COMMENTS OF THE KENTUCKY TELEPHONE ASSOCIATION

The Kentucky Telephone Association ("KTA" or "Association") welcomes the opportunity to comment on the Federal Communications Commission's ("FCC's" or "Commission's") proposals to reform federal high-cost universal service in concert with the National Broadband Plan ("NBP").[1] The individual members of the KTA participating in these comments are rural incumbent local exchange carriers ("RLECs") who provide universal service in their geographic study areas as carriers of last resort.[2] KTA understands that the FCC's intent is to move expeditiously through a series of Notices of Inquiry and Notices of Proposed Rulemaking to reform federal policy on the recommendations proposed in the NBP. The NBP has a long-range goal of replacing "all

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[1] In the Matter of: *Connect America Fund; A National Broadband Plan for Our Future; High-Cost Universal Service Support*; WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, Notice of Inquiry and Notice of Proposed Rulemaking, FCC 10-58 (rel. Apr. 21, 2010) ("NOI/NPRM").

[2] The KTA members participating in these comments include: Ballard Rural Telephone Cooperative, West Kentucky and Tennessee Telecommunications Cooperative, Logan Telephone Cooperative, Duo County Telephone Cooperative, North Central Telephone Cooperative, Brandenburg Telephone, Mountain Rural Telephone Cooperative, Peoples Rural Telephone Cooperative, Foothills Telephone Cooperative, South Central Rural Telephone Cooperative, Coalfields Telephone, Thacker Grisgby Telephone, Highland Telephone Cooperative, and TDS Telecom companies: Lewisport Telephone Company, Leslie County Telephone Company and Salem Telephone Company. The KTA members not participating in these comments include AT&T, Windstream and Cincinnati Bell.

the legacy High-Cost programs with a new program that preserves the connectivity that Americans have today and advances broadband in the 21st century."[3]

In its comments, the RLECs will make some very important initial observations and then address specific proposals identified in the NOI/NPRM. The RLECs demonstrate that under the existing high-cost support mechanisms, the Commission's goal of universal access to broadband in rural areas is indeed being achieved by rate-of-return regulated incumbent local exchange carriers ("LECs"). Furthermore, the RLECs submit that the proposals in the NOI/NPRM to "cap and cut" legacy high-cost support would be extremely detrimental to the continued deployment of broadband to rural areas and thus contrary to the NBP's goal of universal access to broadband in rural areas served by rate-of-return carriers. Accordingly, the FCC should reject certain of the NBP proposal/recommendations appertaining to rate-of-return carriers and move forward in developing a mechanism that would be consistent with the directives and policies established in Communications Act of 1934, as amended ("Act") that further the public interest. Certain of the NBP recommendations appear to fail to preserve and advance universal service in areas served by rural rate-of-return carriers and would be therefore inconsistent with federal law and policy. The RLECs are willing and prepared to begin work on improving the existing programs to achieve the goals of the NBP. Instead of starting from scratch, the RLECs recommend using and improving the existing programs that work in order to preserve and advance universal service in rural areas of the nation.

[3] *NOI/NPRM*, at ¶ 10.

I. Introduction

As with other rural rate-of-return incumbent local exchange carriers throughout the nation, the RLECs are currently providing an array of telecommunications services in their service territories. These services are being provided under federal and state rate-of-return regulation as well as a state obligation of carrier of last resort ("COLR"). As the Commission knows, COLR duties require that carriers provide services to all requesting customers throughout a designated service territory, and provide basic telecommunications services at affordable prices. Furthermore, many of the RLECs are cooperatives. The formation and operation of a cooperative is unique with the purpose of the cooperative to provide services to all members. In most instances, earnings from cooperative operations are redirected to benefit the cooperative members.

Federal universal service support from existing programs is a very important revenue source for the RLECs. In 2009, support from the federal universal service programs amounted to approximately 25 percent of total regulated revenues for the RLECs.[4] The weighted average per line monthly amount of support is nearly $29.00. The RLECs observe that the elimination of these revenue sources—a possible outcome of the NBP recommendations—would prove disastrous to the operations of the RLECs and would imperil the availability of basic and advanced telecommunications services in a large swath of Kentucky.[5]

[4] Analysis includes data for all the RLECs except three.

[5] Attachment A contains a map of the state of Kentucky showing the RLEC services areas.

II. Initial Observations on the NBP Recommendations.

The NBP and Network Reality 101

It is without exaggeration that the Commission is faced with a Herculean task in parsing the recommendations presented in the NBP. The NBP recommendations are far-reaching in that they touch on many if not all the aspects of broadband service. The RLECs agree with the NBP that broadband is a very important service. In rural areas of Kentucky, the availability of broadband provides opportunities that otherwise would not exist—allowing residents in rural Kentucky to benefit from broadband Internet connectivity with the world. Currently, the RLECs offer a wide array of broadband speeds to their customers. Nearly 50 percent of all RLECs' end-users have 4 Mbps download and 1 Mbps upload speed available today. While the average take rate for Internet broadband speed is currently less than the 4/1 standard, as applications and devices evolve, the RLECs expect broadband demand to increase over time; for example, currently some KTA members are providing linear IP video services to customers in which one High Definition channel requires 8 Mbps of bandwidth.

The RLECs urge the Commission to proceed with caution with policy changes affecting rate-of-return cost recovery mechanisms. Despite the best intentions by the authors of the NBP, the easiest or simplest fix to a problem is not always the best fix. The NBP as written severely diminishes the ability of the RLECs to provide service in rural areas of Kentucky. As is well documented, infrastructure costs in less populated areas of the nation are much more costly than urban areas. Kentucky is no different. The RLECs have $467 million in planned capital expenditures over the next five years. This investment that is planned will continue to improve the network in Kentucky so that end-users can benefit from a 21st century network that provides high-quality voice and broadband service.

The NBP makes recommendations to current federal policy without apparently understanding how rural areas of the nation receive broadband services. A one-size-fits-all approach should be rejected by the Commission. The current federal programs providing rural rate-of-return carriers the opportunity to recover costs for voice-grade universal service also serve as the foundation to offer high-quality broadband Internet services. Despite Chairman Genachowski's recent explanation that there is a voice network and a broadband network,[6] and that the recommendations of the NBP are designed to move toward policies explicitly supporting the new broadband network, the rural rate-of-return carriers operate ONE network that serves both voice and broadband services in the last mile to the customer.[7] Improvements to the network serve to preserve voice service and advance the capabilities to offer advanced telecommunications services in rural areas of Kentucky.

<u>NBP Failure to Recommend the Commission Seek Counsel from the Federal State Joint Board on Universal Service</u>

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[6] Wall Street Journal, June 14, 2010 "Limits of Power."

[7] It is true that middle mile costs are not addressed in the current cost recovery mechanisms for rural rate-of-return carriers; however, while the NBP recognizes this problem, it offers little to directly address middle mile costs except to recommend the FCC study the matter. Offering support for this important component of broadband under the proposed universal service cap proposed by the NBP will severely impair rural rate-of-return carriers to recover existing costs and advance universal service in the future.

The RLECs raise a very important procedural matter that appears to be missing from the body of the NBP recommendations. The RLECs observe that the major reforms to federal universal service are not being sent to the Federal State Joint Board on Universal Service for input and recommendations.[8] Section 254 of the Communications Act of 1934, as amended ("Act"), provides for the Joint Board to be an integral contributor to the Commission when addressing federal universal service policy:

> (C)(1) Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services. The Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services
>
> (A) are essential to education, public health, or public safety;
>
> (B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;
>
> (C) are being deployed in public telecommunications networks by telecommunications carriers; and
>
> (D) are consistent with the public interest, convenience, and necessity.
>
> (2) Alterations and modifications.--**The Joint Board may, from time to time, recommend to the Commission modifications in the definition of the services that are supported by Federal universal service support mechanisms.**
>
> (3) Special services.--In addition to the services included in the definition of universal service under paragraph (1), the Commission may designate additional services for such support mechanisms for schools, libraries, and health care providers for the purposes of subsection (h). (Emphasis supplied)

These provisions in the Act suggest that the Joint Board be involved in developing universal service recommendations. Since the passage of the ARRA and the mandate for a national broadband plan, the Federal State Joint Board has been absent from making

[8] The RLECs recognize that the Commission has referred a limited number of Low Income items to the Federal State Joint Board on Universal Service, FCC 10-72, May 4, 2010, but has not referred the substantive and all-encompassing policy recommendations to the Joint Board for input and recommendations.

recommendations about a matter for which it is uniquely qualified to review—the very important interrelationship between federal and state polices involved in universal service policy. To the RLECs, it appears that the NBP seeks to cut out the Congressionally mandated process whereby the Joint Board plays an important part in forming recommendations to establish the definitions of services supported by federal universal service support and the mechanisms by which such support is calculated and distributed. The RLECs submit the failure of the NBP to recognize the importance of the Joint Board in forming universal service policy should be rectified by the Commission. The major reforms proposed by the NBP should be duly considered by the Federal State Joint Board on Universal Service inasmuch as state members of the Joint Board are well versed in policies of universal service and the operations of federal universal service programs. Without a recommendation from the Joint Board, the Commission is failing to receive critical input that advances the public interest.

Universal Broadband Service

The RLECs have another observation about the recommendations sponsored by the NBP. Specifically, RLECs understand that the NBP is recommending a national universal service broadband standard of 4 Mbps download and 1 Mbps upload. However, the NBP recognizes and applauds the expected achievement of 100 Mbps download and 50 Mbps upload in populated areas of the nation over a ten-year timeline. The disparity between urban broadband services and the universal service standard sponsored by the NBP appears to be inconsistent with the Act and also is not in the public interest.

In making universal service policy, the Act requires:

The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

> (1) Quality and rates.--Quality services should be available at just, reasonable, and affordable rates.
> (2) Access to advanced services.--Access to advanced telecommunications and information services should be provided in all regions of the Nation.
> 3) Access in rural and high cost areas.--Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. (Section 254(B))

Establishing a so-called "4/1 standard" for rural areas of the nation while recognizing that urban areas of the nation will have upwards to 25 times the download speed and 50 times the upload speed appears to be inconsistent with the reasonably comparable principle established by Congress in the Act.[9] If implemented, this recommendation will further divide urban and rural areas of the nation; especially as applications are developed for the majority of the nation where there is 100 Mbps broadband available. For example, an over-the-top broadband video application (a single high definition channel compressed using MPEG4 at the lowest quality) requires at least 3 Mbps of bandwidth today. Also, the productivity and cost savings offered by cloud computing will need much more bandwidth than 4 Mbps suggested by the NBP. Multiple applications running at the same time in homes and businesses for work, entertainment, and energy monitoring will have

[9] From the NBP and recent comments by Chairman Genachowski (June 15, 2010 letter to Senate Commerce, Science and Transportation Committee), it appears this standard was established by comparing the United States to other nations' performance with ubiquitous broadband service. With all due respect, the Act does not suggest that United States policy be based on comparative international data; instead, the Act requires the Commission to examine the reasonable comparability of services in urban and rural markets when establishing policy. The NBP fails to examine the metrics required by the Act and therefore, the NBP's faulty recommendation to the Commission should not be adopted.

robust bandwidth requirements. The establishment of a 4 Mbps universal goal will not provide rural America with the infrastructure needed for economic development, education, health care, government involvement, and public safety at levels that are comparable to urban areas in our country. The RLECs urge the Commission to reject this NBP recommendation that is not in the public interest and apparently was established in a manner contrary to the Act.

<u>One-Size-Fits-All Policy is Not in the Public Interest</u>

In forming its recommendations, the NBP appears to underemphasize the success of universal service for rural rate-of-return carriers. The various rate-of-return high cost universal service programs are delivering broadband to a vast number of citizens throughout rural areas of the nation. The percentage of RLECs' customers that can order a 4/1 broadband service today is nearly 50 percent. The RLECs recognize that in rural areas served by non-rural and price cap carriers nationally, broadband availability is less than stellar. In no instance should the Commission gloss over the fact that the current high cost universal service programs deliver broadband in rural rate-of-return areas and jettison these programs in favor of untried and untested models of dubious efficacy. Instead, the Commission should fix what is broken: non-rural support, CETC support and the Commission's contribution base and factor; and improve current rural rate-of-return programs that are generally working.

Another related concern is the increase of uncertainty injected into the industry by the NBP. For example, the NBP states a new fund should "provide any ongoing support necessary to sustain service in areas that already have broadband because of previous support from federal USF."[10] However, the NBP states elsewhere that it does not estimate the amount of support that may be necessary to sustain broadband service in those areas where it is already available.[11] The RLECs are concerned about the message its members are receiving when the NBP speaks about closing an availability gap with investment support without taking into consideration the ongoing costs of existing networks—networks that are or are capable of providing the 4/1 broadband standard already. This uncertainty is particularly acute when viewed in the lens of the NBP proposal to keep the total USF disbursements at 2010 levels for the next ten years (in 2010 dollars).

III. Comments on the NPRM Cap on Universal Service

The first item raised in the NPRM on universal service addresses a cap on the current program in an effort to control the size of the high-cost program. The RLECs believe the NBP recommendation of a cap on federal universal service is arbitrary and is not in the public interest.

The reported motivation used by the NBP for a 2010 cap is founded upon the principle of burden on customers, without recognizing that as broadband service is added as a universal service, there will be a greater number of customers and interstate revenues

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[10] NBP, p. 144.

[11] NBP, p. 155.

subject to the mandated contribution base. Broadband consumers, content providers and network providers will all benefit from a national broadband policy and therefore interstate revenues derived from Internet connectivity services should be part of the national contribution base. Reform of the federal universal service contribution base that reflects the intent of the Act in Section 254 should be the first order of business when evaluating the NBP. Inexplicably, the NBP recommends the Commission examine the contribution factor and base in Stage Two of its recommendations.[12] An orderly examination of the contribution base and factor would greatly reduce the individual contribution burden while simultaneously provide the funding needed to achieve an important national broadband priority. As it stands now, the RLECs observe that the Commission has entered into the policy arena with one hand tied behind its back—certainly not an optimal position when addressing the important topic of national broadband policy.

The NBP arbitrarily recommends a cap on federal support without any recognition that the Act recommends the following policy guideline: "There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service." (47 U.S.C. § 254(b)(5)).

[12] Perhaps more ironic is the fact that the recommended cap on universal service is located as a Stage Three item—well after the reform of the contribution base and factor. The RLECs observe the Commission has taken the capping issue out of NBP sequence and seeks to address the cap in Stage One of the NBP while it is has yet to act on the contribution base and factor that will of necessity be an item for consideration when addressing whether a cap is in the public interest.

Establishing a 2010 cap on federal universal service support (adjusted only for inflation for 10 years) is not in the public interest and does not address the requirement that federal policy shall take into consideration specific, predictable and sufficient Federal mechanisms. The only consideration the NBP has made in forming this recommendation is a concern on the burden of end-user customers—a standard absent in the Act's Section 254. In fact, the guidance Congress gave regarding contributions was that "All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service."[13] When broadband is adopted as a universal service, the universe of broadband providers expands and gives the Commission a great deal of flexibility in assessing contributions. This greatly expanded contribution base will lower the individual burden while simultaneously providing an opportunity to expand the size of the universal service budget to address *inter alia* the non-rural support for rural areas of the nation and the substantial middle mile costs in delivering increased broadband speeds to all rural areas of the nation.

The RLECs urge the Commission to reject the NBP recommendation of a universal service cap. It does so based on the following reasons:

1. As addressed above, the contribution base should be examined before a cap is considered.
2. Ongoing operations need support to preserve universal service in both unserved and high-cost service areas.

[13] 47 U.S.C. §254(b)(4).

3. New investment in unserved and underserved areas needs support to advance new provisions added to federal universal service.
4. Without further data and information, the Commission should not rely on rough and incomplete estimates to determine that our nation's broadband goals will be sufficiently met by the size of the current fund.
5. The Commission should implement efficiency goals for universal service without placing a cap on the fund.
6. The Commission should recognize the NBP does not follow the clear direction of Congress regarding universal service.
7. The Commission does not need Congress to tell it that it may collect and distribute more funds in support of universal service. This direction is already in the Act and no Congressional action has negated this clear mandate.

In summary, the RLECs respectfully recommend the Commission reject the NBP recommendation on a cap until the foregoing items are addressed and considered. Most importantly, the Commission should address the contribution base before discussing a cap on universal service. The important policy of advancing universal service is too important to arbitrarily limit the powers Congress granted to achieve success in this effort.

IV. Comments on the NPRM Conversion to Price Cap Regulation

A second item raised in the NPRM is the NBP recommendation to require the conversion of all rate-of-return regulated carriers to price cap regulation. This recommendation is motivated by the desire to cap one of the federal universal service programs designed to provide rate-of-return carriers the cost recovery for costs assigned to the interstate jurisdiction. Before these costs were recovered from the universal service program, these interstate costs were recovered through common line charges assessed to interstate long distance providers for use of the network to originate and terminate long distance calls. A secondary motivation is the assertion that rate-of-return carriers would have the incentive to become more efficient over time under federal price cap regulation.

The RLECs recommend the Commission not force rate-of-return carriers to price cap regulation. Such an action would seriously disrupt the current operations of the rate-of-return regulated carriers. There isn't any evidence that rate-of-return carriers are inefficient. However, if the Commission were to have this concern, the corporate operations cap on High Cost Loop Support provides a check on inefficiencies for this program. The Commission is able to address other similar methods to curb alleged inefficiencies without discarding the programs that are helping to deliver broadband to areas served by rural rate-of-return carriers in Kentucky.

The RLECs observe that the Commission seeks to support programs that are transparent and accountable. To this end, the Commission has at its disposal a bevy of universal service audits that have proven that rural rate-of-return carriers are accountable for the universal service funds they receive. To address transparency, the Commission could easily establish rules that would add to the transparency of the existing programs without causing undue disruption to the operations of rural rate-of-return carriers.

Also, the RLECs note that while price-cap regulation is designed to provide incentives to become more efficient, it does not provide any incentive to invest in costly infrastructure that provides advanced telecommunications capability (including Internet broadband connectivity). In fact, the NBP observes that the largest price-cap carriers: AT&T, Verizon, and Qwest have a large number of rural areas where broadband is not available. This observation is driven by two factors: price-cap regulation failing to provide incentives to invest in rural areas, and the failure of the existing Commission policies regarding rural areas served by non-rural carriers. Instead of requiring rate-of-return to convert to price-cap regulation, the Commission should instead address its failed universal service policy for non-rural carriers, while allowing rural carriers to remain on rate-of-return regulation and modify the existing programs as necessary.

As to the mechanics of price-cap regulation, the conversion of all rate-of-return carriers to price-cap regulation would seemingly require that all average schedule companies convert to cost to establish a specific cost basis before converting to price cap regulation. This process would be exceedingly burdensome on these carriers (in excess of 400 nationally) and should not be adopted.

V. Summary

The RLECs provide these specific comments and observations to the Commission in furtherance of federal universal service policy. The Commission should conclude that a 2010 cap on universal service is arbitrary and not consistent with Congressional directives. Furthermore, the Commission should reject the NBP recommendation that all rate-of-return regulated carriers convert to price-cap regulation. Such action would lessen the incentive to invest in rural infrastructure—an incentive that should be encouraged as part of a national broadband plan.

Respectfully Submitted,

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Attachment A

Map of RLEC Service Areas in Kentucky

Kentucky's Small Independent Local Exchange Carriers